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09/332,273	06/11/1999	BERNARD S. MIENTUS	AVERP2168US	2718

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EXAMINER

TSOY, ELENA

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 08/27/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/332,273

Applicant(s)

MIENTUS ET AL.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 81-85, 87-89, 91-95, 97-99, 101-104, 107-110, 113 and 115-118 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 81-85, 87-89, 91-95, 97-99, 101-104, 107-110, 113, 115-118 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Amendment filed on July 30, 2003 has been entered. Claims 86 and 96 have been cancelled. Claims 81-85, 87-89, 91-95, 97-99, 101-104, 107-110, 113, 115-118 are pending in the application.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 81-85, 87, 91-95, 97, 101-104, 107, 108, 113** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 4,532,189) in view of EP 569878, and further in view of Josephy et al (US 5,451,283) for the reasons of record as set forth in Paragraph Nos. 4 and 5 of the Office Action mailed on July 11, 2003 (Paper No. 22) since limitations of claims 86 and 96 are inserted into claims 81 and 93.

4. **Claims 88, 89, 98, 99, 109, 110** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 4,532,189) in view of EP 569878 and Josephy et al (US 5,451,283), and further in view of Schreck et al (US 5,716,698).

Josephy et al are applied here for the same reasons as set forth in Paragraph Nos. 4 and 5 of the Office Action mailed on July 11, 2003 (Paper No. 22). Josephy et al further teach that labels can be made *either* clear or opaque depending on intended use of a final product. Inorganic fillers such as calcium carbonate, titanium dioxide and blends thereof may be used to provide opaque film label stock (See column 6, lines 49-51). For contact-clear film label

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applications, the preferred core layer is an EVA-olefin blend without filler. For opaque film label applications, the preferred core layer is the same olefin-EVA blend filled with a mixture of the pigments. The preferred skin layer is an EVA-olefin blend for both contact-clear and opaque label film applications. See column 7, lines 9-16.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used made a film of Mueller in view of in view of EP 569878 either opaque by adding inorganic fillers such as calcium carbonate, titanium dioxide and blends thereof (white pigments) to a EVA-olefin blend core layer or clear depending on intended use of a final product, as taught by Josephy et al.

However, Mueller in view of in view of EP 569878 and Josephy et al fails to teach that the film may be rendered opaque by adding an opacifying layer between the core layer and the second skin layer.

Schreck et al teach that thermoplastic polyolefin films can be made opaque (See column 1, lines 6-13; column 2, line 48) by adding conventional opacifying pigments such as white pigments to at least one of layers of the film (See column 3, lines 44-49, 64; column 4, lines 1-4).

In other words, the secondary reference of Schreck et al is relied upon to show that pigments can be added to *any* layer in thermoplastic polyolefin films to render the films opaque.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have added white pigments to at least one of layers (including a layer between the core layer and the second skin layer) in a film of Mueller in view of EP 569878 and Josephy et al to make the known alternative opaque film, as taught by Schreck et al.

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5. **Claims 115-118** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 4,532,189) in view of Josephy et al (US 5,451,283) for the reasons of record as set forth in Paragraph No. 6 of the Office Action mailed on July 11, 2003 (Paper No. 22).

### ***Response to Arguments***

6. Applicants' arguments filed July 30, 2003 have been fully considered but they are not persuasive.

(A) Applicants argue that there is no teaching or suggestion in Mueller that it would be desirable to include a layer of any adhesive in his multilayer films.

The Examiner respectfully disagrees with this argument. First of all, Mueller does suggest the desirability to include a layer of **sealable** material to at least one side of his multilayer film (of olefin/EVA blend) by teaching "The multi-layer film may be combined with other polymeric materials for *specific applications*. For instance, relatively *thin layers* may be added on *either* or both *sides* of the basic preferred three layer structure to **improve seal strength** or to lower gas and moisture permeability" (See column 4, lines 35-40). Josephy et al, on the other hand, teach that multilayer films of olefin-EVA blends comprising a core layer and skin layers 54, 56 on both sides of the film may be combined with a pressure-sensitive adhesive layer to make a flexible conformable label (See column 1, lines 6-31; column 6, lines 18-30).

Therefore, Mueller suggests the desirability of modification for *specific applications*, and one of ordinary skill in the art at would be motivated to use olefin/EVA multilayer films of Mueller for making flexible labels according to teaching of Josephy et al with the expectation of providing the labels with desired improved physical characteristics. Also one of ordinary skill in

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the art at would have a reasonable expectation of success since labels of Josephy et al are also made of olefin/EVA multilayer films.

(B) Applicants argue that Mueller is not combinable with Josephy et al because films of Muelleris are shrink films and are for the use for in packaging and films of Josephy et al are not shrinkable and are useful in label manufacture.

The Examiner respectfully disagrees with this argument. Films of Mueller may be oriented by stretching (See column 7, lines 23-25); and films of Josephy et al may be also oriented by stretching (See column 8, lines 31-39). One of ordinary skill in the art at knows that multilayer polymeric films are used for making packaging materials as well as label materials.

(C) Applicants argue that claimed invention is not obvious over Mueller in view of Josephy et al because films of Muelleris are shrink films and claimed films are unoriented.

The Examiner respectfully disagrees with this argument. As was discussed in the Paragraph No. 6 of the Office Action mailed on July 11, 2003 (Paper No. 22), Josephy et al teach that polyolefin blend films are resistant to abrasion when extruded, but such resistance is degraded when the film is uniaxially oriented following extrusion. Extruded non-stretched films achieve *high abrasion-resistance ratings*, although their MD stiffness is too low for proper dispensing. See column 10, lines 43-59. In other words, Josephy et al teach that the same film can be used either in oriented form or unoriented depending on intended use of a final product.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an extruded multilayer thermoplastic film of Mueller in view of EP 569878 either in oriented or unoriented form depending on intended use of a final product for

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making labels since Josephy et al teach that unoriented polyolefin blend films provide higher abrasion-resistance ratings compared to oriented films.

### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on Mo-Thur. 9:00-7:30, Mo-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elena Tsoy  
Examiner  
Art Unit 1762

August 25, 2003



**MICHAEL BARR**  
**PRIMARY EXAMINER**